

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of September, two thousand and six.

PRESENT:

HON. JOSEPH M. McLAUGHLIN,
HON. JOSÉ A. CABRANES,
HON. ROSEMARY S. POOLER,
Circuit Judges.

Sheng Kai Dong,

Petitioner,

v.

No. 04-1470-ag
NAC

Immigration and Naturalization Service,
Respondent.

FOR PETITIONER: Sheng Kai Dong, *pro se*, Philadelphia, Pennsylvania.

FOR RESPONDENT: John L. Brownlee, United States Attorney, Jean B. Hudson,
Assistant United States Attorney, Charlottesville, Virginia.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Sheng Kai Dong, *pro se*, petitions for review of the BIA decision affirming Immigration
2 Judge (“IJ”) Patricia Rohan’s decision denying his application for asylum, withholding of removal,
3 and relief under the Convention Against Torture (“CAT”). We assume the parties’ familiarity with
4 the underlying facts and procedural history of the case.

5 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an opinion,
6 *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination.
7 *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362
8 F.3d 155, 158 (2d Cir. 2004). This Court reviews agency findings of fact, including adverse
9 credibility determinations, under the substantial evidence standard, treating them as “conclusive
10 unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. §
11 1252(b)(4)(B); *see Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

12 The IJ determined that because Dong gave varying accounts of his claimed fear of future
13 persecution, he was unable to present a credible and coherent claim and therefore failed to establish
14 his eligibility for relief. The IJ correctly noted that Dong’s oral testimony that the Chinese
15 authorities were seeking to arrest him for writing false prescriptions was not consistent with his
16 asylum application and the letter from his parents, which stated that Dong was wanted by the
17 authorities for involvement in religious proselytizing activities. Because Dong was unable to resolve
18 the discrepancy between the claims described in his asylum application and hearing testimony, the IJ
19 did not err in determining that these conflicting claims fatally undermined his overall credibility and
20 his ability to establish eligibility for relief. *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 398 (2d
21 Cir. 2005) (“Where, as here, immigration officials have been presented with two ‘materially
22 different’ asylum claims, it is entirely appropriate for a factfinder to rely on this evidence as a basis

1 for determining whether a petitioner was actually persecuted in the manner asserted or is instead
2 merely reciting an account fabricated for the purposes of obtaining entry into the United States.”).
3 The IJ reasonably concluded that Dong’s hearing testimony indicated that he was sought by Chinese
4 authorities not for his Buddhist religious practices, but rather, for writing false prescriptions for an
5 unauthorized herbal medicine, and that arrest for such activity did not amount to persecution on
6 account of a protected ground. *See Matter of S-P-*, 21 I. & N. Dec. 486, 493 (BIA 1996).

7 The IJ’s determination that Dong failed to establish a well-founded fear of future persecution
8 on account of a protected ground is substantially supported by the record as a whole; her denial of
9 asylum and withholding of removal was thus appropriate. Because Dong did not present any
10 objective evidence indicating that he would likely be tortured upon return to China, denial of CAT
11 relief was also proper.

12 _____For the foregoing reasons, the petition for review is DENIED. Having completed our review,
13 any stay of removal that the Court previously granted in this petition is VACATED, and any pending
14 motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral
15 argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure
16 34(a)(2) and Second Circuit Local Rule 34(d)(1).

17 FOR THE COURT:

18 Roseann B. MacKechnie, Clerk

19 By:_____